

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
In the Matter of:

PUBLIC SAFETY AND HOMELAND SECURITY)	
BUREAU SEEKS COMMENT ON BAY AREA)	
PETITION FOR WAIVER OF DEADLINE FOR)	PS Docket No. 06-229
ENTERING INTO 700 MHZ SPECTRUM LEASE)	
)	

COMMENTS OF STEVE RAUTER

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, please accept this submittal as opposition to the waiver of the deadline in the proceedings captioned below:

PS Docket No. 06-229

DA 12-32

Released: January 10, 2012

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON BAY AREA PETITION
FOR WAIVER OF DEADLINE FOR ENTERING INTO 700 MHZ SPECTRUM LEASE PS Docket No. 06-229

The urgency of this request seems to be driven by two factors that are mentioned in the proceedings.

Since both issues are presented as reasons to compel the Commission to act on the waiver, these issues should be taken into consideration and explored fully.

1) The BTOP grant/funding mechanism:

Please review the seminal documents of this scheme. Based on what was submitted and what is proposed, it appears that the scope, membership (Project Partners), and nature of the project has changed significantly. Santa Clara was not mentioned in the original grant, then somehow became a participant, and apparently now is not participating. If other Federal grant applicants changed the scope or parameters of similar grants, such as the process used for PSIC grants, the grant would be denied, and the Commission would not be under the pressure to process an extension for this errant project. This is also setting poor precedence for the integrity of NTIA and BTOP grants process.

http://www2.ntia.doc.gov/files/grantees/fact_sheet_-_motorola.pdf

2) The desire of the vendor to expedite construction based on a contract.

If the Commission were to solely base its decision on a construction contract delay, there may be some merit to granting an extension. Due to the surrounding circumstances, the Commission needs to review all of the public record to be well informed on the implications of supporting what is now documented as a highly troubled project.

<http://blog.tcomeng.com/index.php/2011/the-appearance-of-impropriety-part-13/>

("The Appearance of Impropriety": A 13 part series based on the public record.)

Three additional issues should be factors for the Commission to consider in these proceedings:

3) Concerns raised by the House Committee on Science and Technology regarding competition in this market space.

On its face, the sole-source, non-competitive nature of this particular grant appears to be counter to the SAFECOM Grant Guidance documents. Based on what is in the public domain, the Bay Area scheme is the only grant where the vendor is the applicant, the vendor named the participants - many appear to simply be subcontractors of the vendor, and the vendor was awarded the grant directly. If the grant is shifting from the vendor (original application) to a new entity formed only recently, this should disqualify the grant. Since it is unclear who truly needs to hold the spectrum lease, the FCC should deny the waiver request. Further, if the extension is granted, the FCC appears to endorse no-bid, sole-source schemes where instead of having open competition based on published standards, a vendor writes and administers a grant and is the direct beneficiary of a grant.

http://www.safecomprogram.gov/library/Lists/Library/Attachments/91/FY_2011_SAFECOM_Guidance_121510.pdf

Quote from the SAFECOM Grant Guidance:

"Procurement transactions should be conducted to ensure open and free competition"

and

"Grantees/subgrantees should avoid non-competitive practices (e.g., contractors that developed the specifications for a project should be excluded from bidding)"

According to the public record, it clearly appears that the vendor developed the specifications.

In addition, the House Committee on Science and Technology recently raised concerns about competition in the acquisition of public safety communications systems. If a vendor is the grant writer, grant applicant, grant recipient, and primary beneficiary of a grant, how is competition enhanced? The Commission, in this current proceeding, should not inject itself into the promotion and facilitation of non-competitive grant awards.

http://www.radioresourcemag.com/newsArticle.cfm?news_id=6920

4) A recent report from the Inspector General of the Commerce Department regarding the Bay Area broadband project.

The Commerce Department IG appears to have uncovered misrepresentations and other flaws regarding the Bay Area project. The Commission, if it grants this extension, would be making a precedent-setting decision that relies upon the applicant's misrepresentations recently revealed by the Inspector General.

<http://www.scribd.com/doc/78119054/BayWEB-OIG-12-016-M-01-10-2012>

5) A recent withdrawal of a Bay Area participating entity.

It now appears that an entity that was once a participant in the project has reservations, does not plan on being a direct user of the spectrum in question, and appears to be seeking a commercial solution.

This changes the scope of the project, whether it is under the BayRICS banner, the BayWEB banner, or the vendor's banner. The legal implications raised in the Santa Clara withdrawal seem to indicate that the regional plan, as it stands, may not be sustainable (see comment in the link below). As a project that is supposed to be held up as a wireless broadband example to lead the way for others nationwide, it has

become a bad example on many fronts – flawed grant, flawed governance, flawed planning, and now a flawed timeline that brings it to the Commission’s attention to help resolve.

<http://blog.tcomeng.com/index.php/2012/santa-clara-county-opts-out-of-the-bayweb-boom-agreement/>

Summary:

With all the facts in the public record and probable impropriety surrounding this project, the Commission should deny the deadline waiver.

In reviewing various articles and public records, the Commission should consider questioning the submitter whether the granting this waiver has any beneficial impact on timely completion of the project. It appears that, whether or not this waiver is granted, there is little probability that the project will be completed by the dates required for the BTOP grant. If the FCC realizes that the project can’t be completed in a timely manner, then it should reject the request. The Commission should not facilitate the seemingly improper use of precious Federal grant funds on a project that has a low potential for success.

Comments above are my own as a private citizen and may not reflect the opinion of my employer or any organization for which I am a participant or officer.

Respectfully submitted,

/s/ Steve Rauter

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January 17, 2012